
HOUSE BILL No. 1319

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-7-4.

Synopsis: Public hearings for zoning changes. Requires two public hearings before a zoning ordinance can be adopted, a change in zoning maps or zoning ordinances can occur, or before a zoning variance for use or exception can be made.

Effective: July 1, 2001.

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January 9, 2001, read first time and referred to Committee on Local Government.

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Introduced

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 1319

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 36-7-4-604 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 604. (a) Before the plan
3 commission certifies a proposal to the legislative body under section
4 605 of this chapter, the plan commission must hold ~~a~~ **two** public
5 ~~hearing~~ **hearings** under this section.

6 (b) The plan commission shall give notice of ~~the~~ **a** hearing by
7 publication under IC 5-3-1. The notice must state:

8 (1) the time and place of the hearing;

9 (2) either:

10 (A) in the case of a proposal under section 606 or 607 of this
11 chapter, the geographic areas (or zoning districts in a specified
12 geographic area) to which the proposal applies; or

13 (B) in the case of a proposal under section 608 of this chapter,
14 the geographic area that is the subject of the zone map change;

15 (Subdivision (2) does not require the identification of any real
16 property by metes and bounds.)

17 (3) either:



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(A) in the case of a proposal under section 606 of this chapter, a summary (which the plan commission shall have prepared) of the subject matter contained in the proposal (not the entire text of the ordinance);

(B) in the case of a proposal under section 607 of this chapter, a summary (which the plan commission shall have prepared) of the subject matter contained in the proposal (not the entire text) that describes any new or changed provisions; or

(C) in the case of a proposal under section 608 of this chapter, a description of the proposed change in the zone maps;

(4) if the proposal contains or would add or amend any penalty or forfeiture provisions, the entire text of those penalty or forfeiture provisions;

(5) the place where a copy of the proposal is on file for examination before the hearing;

(6) that written objections to the proposal that are filed with the secretary of the commission before the hearing will be considered;

(7) that oral comments concerning the proposal will be heard; and

(8) that the hearing may be continued from time to time as may be found necessary.

(c) The plan commission shall also provide for due notice to interested parties at least ten (10) days before the date set for the a hearing. The commission shall by rule determine who are interested parties, how notice is to be given to interested parties, and who is required to give that notice. However, if the subject matter of the proposal abuts or includes a county line (or a county line street or road or county line body of water), then all owners of real property to a depth of two (2) ownerships or one-eighth (1/8) of a mile into the adjacent county, whichever is less, are interested parties who must receive notice under this subsection.

(d) ~~The A~~ hearing **under this section** must be held by the plan commission at the place stated in the notice. The commission may also give notice and hold hearings at other places within the county where the distribution of population or diversity of interests of the people indicate that the hearings would be desirable. The commission shall adopt rules governing the conduct of hearings under this section.

(e) A zoning ordinance may not be held invalid on the ground that the plan commission failed to comply with the requirements of this section, if the notice and hearing substantially complied with this section.

(f) The files of the plan commission concerning proposals are public

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records and shall be kept available at the commission's office for inspection by any interested person.

(g) METRO. In the case of a proposal to amend a zoning map under section 608 of this chapter or in the case of a proposed approval of a development plan required by a zoning ordinance as a condition of development, a person may not communicate before the hearing with any hearing officer, member of the historic preservation commission, or member of the plan commission with intent to influence the officer's or member's action on the proposal. Before the hearing, the staff may submit a statement of fact concerning the physical characteristics of the area involved in the proposal, along with a recital of surrounding land use and public facilities available to serve the area. The staff may include with the statement an opinion of the proposal. The statement must be made a part of the file concerning the proposal not less than six (6) days before the proposal is scheduled to be heard. The staff shall furnish copies of the statement to persons in accordance with rules adopted by the commission.

(h) METRO. In the case of a proposal to amend a zoning map under section 608 of this chapter, this subsection applies if the proposal affects only real property within the corporate boundaries of an excluded city. Notwithstanding the other provisions of this section, the legislative body of the excluded city may decide that the legislative body rather than the plan commission should hold the public hearing prescribed by this section. Whenever the plan commission receives a proposal subject to this section, the plan commission shall refer the proposal to the legislative body of the excluded city. At the legislative body's first regular meeting after receiving a referred proposal, the legislative body shall decide whether the legislative body will hold the public hearing. Within thirty (30) days after making the decision to hold the hearing, the legislative body shall hold the hearing, acting for purposes of this section as if the legislative body is the plan commission. The legislative body shall then make a recommendation on the proposal to the plan commission. After receiving the excluded city legislative body's recommendation (or at the end of the thirty (30) day period for the public hearing if the proposal receives no recommendation), the plan commission shall meet and decide whether to make a favorable recommendation on the proposal. If the proposal receives a favorable recommendation from the commission, the proposal shall be certified to the county legislative body as provided in section 605 of this chapter.

(i) At the first hearing a plan commission must hold under this chapter, the plan commission shall take public testimony and

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1 answer public questions concerning the proposal. Not less than
 2 thirty (30) days after the first public hearing, the plan commission
 3 shall hold a second public hearing on the proposal. At the second
 4 public hearing the plan commission shall take public testimony and
 5 answer public questions concerning the proposal. The plan
 6 commission shall make a recommendation on the proposal to the
 7 legislative body after the second public hearing.

8 SECTION 2. IC 36-7-4-911 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 911. (a) An action of
 10 the board of zoning appeals is not official, unless it is authorized by a
 11 majority of the entire membership of the board.

12 (b) An action of the board of zoning appeals concerning a:

- 13 (1) special exception;
- 14 (2) special use;
- 15 (3) contingent use; or
- 16 (4) conditional use;

17 is not official, unless the board considers the action at two (2)
 18 public hearings, occurring not less than thirty (30) days apart,
 19 before making a final determination on the action.

20 SECTION 3. IC 36-7-4-919 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 919. (a) An appeal filed
 22 with the board of zoning appeals must specify the grounds of the appeal
 23 and must be filed within such time and in such form as may be
 24 prescribed by the board of zoning appeals by rule.

25 (b) The administrative official, hearing officer, administrative board,
 26 or other body from whom the appeal is taken shall, on the request of the
 27 board of zoning appeals, transmit to it all documents, plans, and papers
 28 constituting the record of the action from which an appeal was taken.

29 (c) Certified copies of the documents, plans, and papers constituting
 30 the record may be transmitted for purposes of subsection (b).

31 (d) Upon appeal, the board may reverse, affirm, or modify the order,
 32 requirement, decision, or determination appealed from. For this
 33 purpose, the board has all the powers of the official, officer, board, or
 34 body from which the appeal is taken.

35 (e) The board shall make a decision on any matter that it is required
 36 to hear under the 900 series ~~either:~~

- 37 ~~(1) at the second meeting public hearing at which that matter is~~
- 38 ~~first presented. or~~
- 39 ~~(2) at the conclusion of the hearing on that matter; if it is~~
- 40 ~~continued.~~

41 (f) Within five (5) days after making any decision under the 900
 42 series, the board of zoning appeals shall file in the office of the board

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1 a copy of its decision.

2 SECTION 4. [EFFECTIVE JULY 1, 2001] **Notwithstanding**
3 **IC 36-7-4-604, IC 36-7-4-911, and IC 36-7-4-919, all as amended by**
4 **this act, a valid action of a plan commission or board of zoning**
5 **appeals that occurred:**

6 (1) before July 1, 2001; and

7 (2) after consideration of the action at only one (1) hearing;
8 is valid after June 30, 2001.

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